

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

B
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75-1103

IN THE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NO. 75-1103

UNITED STATES OF AMERICA

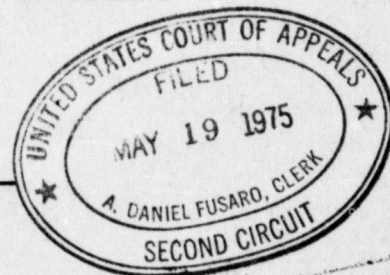
PLAINTIFF-APPELLEE

V.

MARGARET SAMUEL

DEFENDANT-APPELLANT

APPENDIX TO BRIEF OF
DEFENDANT-APPELLANT
MARGARET SAMUEL



GREGORY B. CRAIG
COUNSEL FOR DEFENDANT-APPELLANT
770 Chapel Street
New Haven, Connecticut

PAGINATION AS IN ORIGINAL COPY

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B 74-00

| TITLE OF CASE | ATTORNEYS |
|-------------------|---|
| THE UNITED STATES | For U.S.: |
| VS. | Stewart H. Jones, U.S. Atty. |
| | H. James Pickerstein, Asst. |
| | U.S. Atty. |
| MARGARET SAMUEL | 915 Lafayette Boulevard |
| | Bridgeport, CT 06604 |
| | |
| | |
| | For Defendant: |
| | Thomas D. Clifford, Apptd. |
| | Federal Public Defender |
| | FPO-Chapel Street |
| | New Haven, Connecticut 06510 |
| | Shipman & Goodwin |
| | 799 Main St., Hartford, Ct. |
| | 06108 |

[illegible]

| DATE | PROCEEDINGS |
|------|--|
| 1974 | |
| 5/23 | The Grand Jury at Bridgeport returned a True Bill of indictment charging violation of 18 USC 1708, 9 Counts - Possession of stolen mail |
| 5/23 | Summons to issue. (Lumbard, J., Sitting by Designation) |
| 5/24 | Summons issued and together with certified copy of indictment, sent to Marshal for service. [Appearance at New Haven, 6/3/74] |
| 5/31 | Certified Mail Receipt #552659, filed. - Margaret Samuel. |
| 6/3 | PLEA of not guilty entered to all counts. Case continued, same bond, for trial |
| 6/5 | Marshal's Return (Summons, indictment), filed. (Newman, J.) |
| 6/3 | Thomas D. Clifford, Esq., Federal Public Defender, appointed as counsel for defendant. |
| 6/3 | Court Reporter's Notes of proceedings held June 3, 1974, filed at New Haven. (Gale, R.) |
| 6/18 | CJA FORM 21 authorizing Miss Elizabeth McCarthy as Handwriting Analyst for Defendant, executed and filed. (Newman, J.) Copies to Miss McCarthy and Admin. Ofc. |
| 6/28 | CJA FORM 21 executed, approved by the Court, and filed. (Newman, J.) Copy mailed Miss E. McCarthy and Administrative Office for payment. |
| 7/8 | Court Reporter's Sound Recording of proceedings held June 3, 1974, filed at New Haven. (Gale, R.) |

| DATE | PROCEEDINGS |
|-------|---|
| 1974 | |
| 9/5 | Motion to Stay The Proceeding, To Strike The Jury Panel And For A Supplemental Order Concerning The Selection of Prospective Petit Jurors, filed by defendant. |
| 9/23 | Government's Response To Defendant Margaret Samuel's Motion To Stay The Proceeding, To Strike The Jury Panel And For A Supplemental Order Concerning The Selection Of Prospective Petit Jurors, filed. |
| 9/25 | Government's Notice Of Readiness for trial, filed. |
| 9/24 | CALL OF JURY ASSIGNMENT CALENDAR: Ready for next calendar as No.7. (Newman, J.) |
| 11/25 | JURY TRIAL COMMENCES: Deft. renews motion to strike jury panel as argued in Crim. #B-115 and asks Court to apply it to this case--MOTION DENIED. Deft's Submission Of Voir Dire Questions, filed. Jury of 12 and 2 alternates impanelled and sworn. Jury excused at 1:00 p.m. until Tuesday, Dec. 3, 1974, at 10:00 a.m. Evidence in this case to begin on Dec.3, 1974, at 10:00 a.m. Jurors Mrs. Brooks and Mrs. Donovan questioned further on voir dire at 3:15 p.m. After voir dire, Court excuses Juror #5 (Mrs. Donovan) and places Alternate #2, Mrs. Jennie Johnson as Juror #5. Court adjourned at 3:30 p.m. (Newman, J.) |
| 12/2 | Marshal's return showing service, filed. - 3 Subpoenas to Testify. |
| 11/26 | Court Reporter's Notes of proceedings held Nov.25, 1974, filed at New Haven. (Gale, R.) |
| 12/3 | JURY TRIAL CONTINUES: Govt. Exs. 1 through 9, marked for Ident. Govt. Ex. 1-A through 9-A, marked for Ident. Jury of 12 and 1 alternate present. Twelve (12) Govt. witnesses sworn and testified. Govt. Exs. 1A through 9A, admitted as full Exhibits; 1-B, 9B, 10, 10A, 10B, and 11 through 14, filed. Court recess 1:05 to 2:05 p.m. Two (2) Govt. witnesses sworn and testified. Govt. Exs. 9 admitted as full exhibit and 15 through 18, filed. Court adjourned at 3:10 p.m. until tomorrow, Dec.4, 1974, at 10:00 a.m. (Newman, J.) |
| 12/4 | JURY TRIAL CONTINUES: Jury of 12 and 1 alternate present. One (1) Govt. witness sworn and testified. Govt. Ex. 1-B, marked for Ident; 19, 20 and 21, filed. Govt. rests at 11:16 a.m. Deft.'s Oral Motion For Judgment of Acquittal--DENIED. Deft. sworn and testified on her own behalf. Deft. rests at 12:08 p.m. Jury excused at 12:08 p.m. until tomorrow, Dec.5, 1974, at 10:00 A.M. Deft. renews Motion For Judgment of Acquittal-- DENIED. Court adjourned until tomorrow, Dec.5, 1974, at 10:00 am. (Newman, J.) |
| 12/5 | JURY TRIAL CONTINUES: Verbal Requests to Charge made by both sides. Court advises counsel of proposed Rulings on Requests To Charge. Jury of 12 and 1 alternate present. Summations by counsel: Govt. - 10:25 to 10:30 a.m.; Deft. - 10:39 to 11:05am Govt. closes - 11:05 to 11:10 a.m. Court charges jury - 11:10 to 11:33 a.m. Alternate juror excused with thanks of Court. Jury retires to juryroom at 11:35 a.m. Govt. has no exceptions to charge; Deft. takes exceptions. No further charge given jury. Counsel agree on exhibits and Indictment to go to jury. 11:30 a.m. Exhibits and Indictment taken to juryroom by Marshal and jury starts deliberations. Lunch brought in for jury at Govt. expense. Jury returned to Courtroom at 2:20 p.m. with a verdict of guilty on all 9 counts of Indictment. Charles L. Peschel, foreman. Jury polled at Deft. request. Verdict verified and ordered recorded. Jury excused at 2:23 p.m. with thanks of Court. Case continued on same bond. Court adjourned at 2:24 p.m. (Newman, J.) |
| 12/9 | Marshal's Return Showing Service, filed. 4 Subpoenas to Testify, 1 Subpoena to Produce Document or Object. |
| 12/16 | Court Reporter's Notes of proceedings held on Nov. 3, 4, 5, 1974 before Newman, J., filed at New Haven. (Gale, R.) |

| DATE | PROCEEDINGS |
|-------|--|
| 1975 | |
| 3/7 | DISPOSITION: Imprisonment for 1 year on Cts. 1,2,3,4,5,6,7,8 & 9. Execution of sentence suspended after 60 days and deft. placed on probation for 2 years. Court advises defendant of her right to appeal. Notice to be filed in 10 days. Notice of Appeal, filed. Same bond continued pending appeal. (NEWMAN, J.) (Gale, R., Rowe, D. C.) M-3/7/75 |
| 3/11 | Copies of Deft's. Notice of Appeal mailed to Attys. Pickerstein and Clifford and Deft. Samuel. |
| 3/12 | Judgment and Commitment/Probation, entered. (NEWMAN, J.) Two certified copies handed to Marshal for service; two cert. copies to Prob. Office. |
| * | M-3/14/75 |
| 3/14 | Defendant's Request to proceed on Appeal in forma pauperis, endorsed: "3/14/75 Leave to appeal in Forma Pauperis granted." NEWMAN, J. M-3/17/75 |
| | Copies to Attys. Pickerstein and Clifford, also Atty. Craig, Deft. Samuel and Probation Office. |
| 3/12* | Court Reporter's notes of proceedings held on March 5 and 7, 1975; filed in New Haven. (Gale, R.) |
| 3/18 | CJA FORM 21 authorizing Trial transcript for appeal purposes (Gale, R.) executed and filed. Newman, J. |
| 3/18 | Forms A & B, filed. |
| 3/19 | Notice to Probation Office re: Notice of Appeal and copy of Form A handed to Probation Officer. |
| 3/19 | Certified copies of Docket Entries and Notice of Appeal with endorsement to proceed on Appeal in forma pauperis, thereon, along with Forms A and B forwarded to Clerk, U. S. C. A. |
| 3/20 | CJA Form 23 Financial Affidavit of Defendant, filed. |
| 3/24 | CJA Form 20, executed by Newman, J., appointing Thomas D. Clifford, Esq., as counsel for defendant, filed. Copies mailed Attorney Clifford and Administrative Office. |
| 3/27 | Record on Appeal forwarded Clerk, U. S. Court of Appeals by Cert. Mail #827857 with return receipt, together with 2 extra copies of the Index. Copies of Index and Docket Entries sent Attys. Pickerstein and Clifford. |
| 3/31 | Cert. Mail Receipt #827857, filed. (No signature) |
| 3/31 | Scheduling Order from U. S. Court of Appeals, filed. Transcript and Record to be docketed on or before April 16, 1975. |
| 4/1 | Acknowledgment of receipt of Record received from Clerk, U. S. Court of Appeals. |
| 4/3 | Transcript of proceedings held on Dec. 3, 1974, at New Haven, before Newman, J. and a Jury, filed. |
| 4/3 | Transcript of proceedings held on Dec. 4, 1974, at New Haven, before Newman, J. and a Jury, filed. (Gale, R.) |
| 4/3 | Transcript of proceedings held on Dec. 5, 1974, at New Haven, before Newman, J. and a Jury, filed. (Russell, R.) |

FILED

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CLERK
U.S. DISTRICT COURT
BRIDGEPORT, CONN.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

v.

MARGARET SAMUEL

CRIMINAL NO.

74-39

I N D I C T M E N T

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 30th day of October, 1972, in the District of Connecticut, MARGARET SAMUEL had in her possession a Connecticut State Welfare check, number DC-500525, dated November 1, 1972, payable to the order of Daisy Langston, in the amount of \$74.81, which had been stolen from the mail, well knowing the said check had been stolen, in violation of Title 18, United States Code, Section 1708.

COUNT TWO

On or about the 30th day of October, 1972, in the District of Connecticut, MARGARET SAMUEL had in her possession a Connecticut State Welfare check, number DC-515717, dated November 1, 1972, payable to the order of Shirley Woods, in the amount of \$126.35, which had been stolen from the mail, well knowing the said check had been stolen, in violation of Title 18, United States Code, Section 1708.

COUNT THREE

On or about the 15th day of November, 1972, in the District of Connecticut, MARGARET SAMUEL had in her possession a Connecticut State Welfare check, number DC-542920, dated November 16, 1972, payable to the order of Doris Lindsay, in the amount of \$114.33, which had been stolen from the mail, well knowing the said check had been stolen, in violation of Title 18, United States Code, Section 1708.

COUNT FOUR

On or about the 30th day of November, 1972, in the District of Connecticut, MARGARET SAMUEL had in her possession a Connecticut State Welfare check, number DC-575709, dated December 1, 1972, payable to the order of Doris Lindsay, in the amount of \$342.99, which had been stolen from the mail, well knowing the said check had been stolen, in violation of Title 18, United States Code, Section 1708.

COUNT FIVE

On or about the 30th day of November, 1972, in the District of Connecticut, MARGARET SAMUEL had in her possession a Connecticut State Welfare check, number AD-090680, dated December 1, 1972, payable to the order of Susie Pettus, in the amount of \$141.50, which had been stolen from the mail, well knowing the said check had been stolen, in violation of Title 18, United States Code, Section 1708.

COUNT SIX

On or about the 30th day of November, 1972, in the District of Connecticut, MARGARET SAMUEL had in her possession a Connecticut State Welfare check, number DC-585487, dated December 1, 1972, payable to the order of Shirley Woods, in the amount of \$126.35, which had been stolen from the mail, well knowing the said check had been stolen, in violation of Title 18, United States Code, Section 1708.

COUNT SEVEN

On or about the 1st day of December, 1972, in the District of Connecticut, MARGARET SAMUEL had in her possession a Connecticut State Welfare check, number DC-603162, dated December 1, 1972, payable to the order of Shirley Woods, in the amount of \$86.66, which had been stolen from the mail, well knowing the said check had been stolen, in violation of Title 18, United States Code, Section 1708.

COUNT EIGHT

On or about the 1st day of February, 1973, in the District of Connecticut, MARGARET SAMUEL had in her possession a Connecticut State Welfare check, number DC-731492, dated February 1, 1973, payable to the order of Doris Lindsay, in the amount of \$342.99, which had been stolen from the mail, well knowing the said check had been stolen, in violation of Title 18, United States Code, Section 1708.

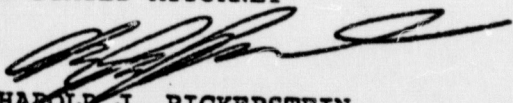
COUNT NINE

On or about the 1st day of October, 1972, in the District of Connecticut, MARGARET SAMUEL had in her possession a Connecticut State Welfare check, number DC-444410, dated October 1, 1972, payable to the order of Lindora Barnes, in the amount of \$153.37, which had been stolen from the mail, well knowing the said check had been stolen, in violation of Title 18, United States Code, Section 1708.

A TRUE BILL

Ernest A. Druka
FOREMAN

STEWART H. JONES
UNITED STATES ATTORNEY


BY: HAROLD J. PICKERSTEIN
ACTING UNITED STATES ATTORNEY

I hereby certify that the foregoing
is a true copy of the original
document on file. Date: May 23, 1974

SILVESTER A. MARKOWSKI

Clerk

By: John B. Egan

Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :
V. : CRIM. NO. B-74-39
MARGARET SAMUEL :

MOTION TO STAY THE PROCEEDING, TO STRIKE
THE JURY PANEL AND FOR A SUPPLEMENTAL
ORDER CONCERNING THE SELECTION OF
PROSPECTIVE PETIT JURORS

Pursuant to Title 28 §1867 of the United States Code the defendant respectfully requests the Court to stay the proceedings against her, to strike the present jury panel and for an order directing a supplemental procedure for the selection for prospective petit jurors for the following reasons and for the reasons stated in the attached affidavits of William Davis and Nancy Ryan (offered in United States v. Gonzalez, B-115)

1. Title 28 § 1861 provides -

"It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes. It is further the policy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and shall have an obligation to serve as jurors when summoned for that purpose."

2. Title 28 §1862 provides -

"No citizen shall be excluded from service as a grand or petit juror in the district courts of the United States on account of race, color, religion, sex, national origin or economic status."

3. Title 28 §1863 (b) (2) provides -

"Among other things, such plan shall...specify whether the names of prospective jurors shall be selected from the voter registration lists or the lists of actual voters of the political subdivisions within the district or division. The plan shall prescribe some other source or sources or names in addition to voter lists where necessary to foster the policy and protect the rights secured by sections 1861 and 1862 of this title..."

4. Pursuant to Title 28, chapter 121 this district adopted a jury selection plan on September 12, 1968 of which this Court is requested to take judicial notice.

5. According to such Plan prospective petit jurors in this district are selected at random from the most recent voter registration list from each of the 169 towns of the district.

6. Said Plan has failed to substantiate and comply with the provisions of Title 28, chapter 121 for the reasons that there has been a significant under representation of minority groups on petit jury panels in this district from the date said Plan was adopted.

7. In accordance with 28 U.S.C. §1867 (d) the defendant requests permission to present testimony in support of this motion and will request the Court to incorporate the affidavits, testimony and other evidence offered in United States v. Louis Gonzalez, Crim No. B-115 for the purposes of deciding this motion.

8. Upon information and belief, the petit jury panel to be summoned on September 24, 1974 will be from the master qualified wheel of August 1973 and the same pool as presented in United States v. Gonzalez.

Dated this day of September, 1974 at New Haven, Connecticut.

THE DEFENDANT
MARGARET SAMUEL

BY

Thomas D. Clifford
Thomas D. Clifford
Her Attorney

CERTIFICATION

I hereby certify that a copy of this motion was mailed to Thomas F. Maxwell, Jr., Esq., Assistant United States Attorney, Federal Building, 915 Lafayette Boulevard, Bridgeport, Ct.

Thomas D. Clifford
Thomas D. Clifford

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :
V. : CRIM. NO. B-115
LOUIS GONZALEZ :

AFFIDAVIT

We, Nancy Ryan and William Davis, being duly sworn,
depose and say:

1. On December 17, 1973, pursuant to instructions from Thomas D. Clifford, Federal Public Defender for the District of Connecticut, we reviewed 455 completed petit jury questionnaires on file in the Clerk's Office, New Haven.
2. Upon information and belief, said questionnaires were mailed to prospective jurors on August 16, 1973.
3. The questionnaires were divided into two categories: (1) jurors accepted for jury service and (2) jurors rejected for jury service.
4. All questionnaires reviewed requested prospective petit jurors to indicate their race.
5. Of the 455 completed questionnaires reviewed the following indications of race were made by prospective jurors:

| | |
|--|-------|
| (a) Caucasian: | 380 |
| (b) Negro | 9 |
| (c) Spanish speaking or Puerto Rican | 4* |
| (d) Other | 3** |
| (e) No indication of race (see attached exhibit) | 59*** |

- * One responded Peruvian.
- ** One oriental-American; one other American; one white American Indian.
- *** Six questionnaires were not filled in as to race; fifty three questionnaires were not returned to the Clerk for reasons of death or removal of district.

6. Attached hereto is Exhibit A which reflects the name, residence and race of jurors accepted for jury service and Exhibit B of jurors with similar information who were rejected for jury service.

7. I, William Davis, am a resident of New Haven, a student at the Yale Law School, am over 21 years of age and believe in the obligation of an oath.

8. I, Nancy Ryan, am a resident of New Haven, a student at the Yale Law School, am over 21 years of age and believe in the obligation of an oath.

_____(L.S.)
William Davis
7 Trumbull Street
New Haven, Connecticut

_____(L.S.)
Nancy Ryan
24 Norton Street
New Haven, Connecticut

Subscribed and sworn to before me this day of April, 1974.

Thomas D. Clifford
Commissioner of Superior Court

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RECEIVED
SEP 24 1974
OFFICE OF THE FEDERAL
PUBLIC DEFENDER, N.H.

UNITED STATES OF AMERICA

:

v.

:

CRIMINAL NO. B-74-39

:

MARGARET SAMUEL

GOVERNMENT'S RESPONSE TO DEFENDANT MARGARET SAMUEL'S MOTION TO
STAY THE PROCEEDING, TO STRIKE THE JURY PANEL AND FOR A SUPPLE-
MENTAL ORDER CONCERNING THE SELECTION OF PROSPECTIVE PETIT JURORS

Defendant Margaret Samuel's motion is identical to the motion filed in United States v. Louis Gonzalez, Criminal No. B-115, and since defendant Samuels has requested that the evidence offered in that motion be incorporated by reference in this motion, the Government would rely on the Court's ruling in United States v. Louis Gonzalez, et al, (D.Conn. Crim. No. B-115, May 22, 1974).

PETER C. DORSEY
UNITED STATES ATTORNEY

Thomas F. Maxwell, Jr.
BY: THOMAS F. MAXWELL, JR.
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :
V. : CRIMINAL NO. B-115
LOUIS CONZALEZ ET AL :

RULING ON DEFENDANTS'
MOTION TO STRIKE JURY PANEL

Defendants have moved to strike the jury panel and stay proceedings pending issuance and compliance with an order to supplement the jury list with additional Negro veniremen. A similar challenge was presented and rejected in United States v. Jenkins, ___ F.2d ___ (2d Cir. Apr. 5, 1974). The facts relied on in support of this motion are slightly more favorable to defendants than the facts developed in Jenkins. There the evidence disclosed that those drawn from voter registration lists to be considered for jury service included 3.3% Negroes, compared to 5.45%, the percentage of Negroes in the adult population of the New Haven jury division. Current questionnaires of prospective veniremen disclose that the percentage of Negroes is now only 2.26%. It is thus apparent, as it was in Jenkins, that the use of voter registration lists in the New Haven jury division is not producing a percentage of Negroes equivalent to their percentage in the adult population. The question remains whether the extent of disparity violates statutory or constitutional standards.

In Jenkins, the Court of Appeals focused attention on "the difference that would result in the absolute racial composition of the venire as a result of under-registration of blacks as voters." (slip op. p. 2701). The percentages of 5.45% and 3.3%, when applied to a typical venire of sixty members, produced an average number (when rounded off to the nearest whole number) of three Negroes, if the venire were perfectly representative, compared to two Negroes, to be expected from a venire drawn from the jury wheel then in use. The current percentage of 2.26%, when applied to a venire of sixty, produces an average of only one Negro to be expected on each venire. The Court of Appeals did not think that a difference of one Negro per venire caused any denial of rights in Jenkins, and, though the issue is closer here, it does not appear that a difference of two Negroes per venire would change the Court of Appeals decision. Moreover, venires drawn in this District more often average forty members or less than sixty, and the percentages applicable in this case, when applied to a venire of forty (and rounded off to the nearest whole number) still produce an absolute difference of only one Negro.

Defendants seek to bolster the significance of the disparity in percentages with statistical evidence concerning the probability of different numbers of Negroes appearing on a venire drawn from lists that included 5.45% and 2.26% Negroes. Expert testimony disclosed that for such lists, the

...ing numbers of Negroes would be selected on a venire of sixty in the following percentage of drawings:

| <u>Number of Negroes</u> | <u>5.45% list</u> | <u>2.26% list</u> |
|--------------------------|-------------------|-------------------|
| 0 | 3.5% | 25.4% |
| 1 | 12.0% | 35.2% |
| 2 | 20.4% | 24.0% |
| 3 | 22.7% | 10.7% |
| 4 | 18.6% | 3.5% |
| 5 | 12.0% | .9% |
| 6 | 6.4% | .2% |
| 7 or more | 4.4% | .4% |

Thus, as defendants emphasize, a representative list would produce five or more Negroes on a venire of sixty in 22.8% of the drawings, while the actual list can be expected to produce five or more Negroes in only 1.5% of the drawings.

What seems significant for these defendants, however, is the result to be expected when a venire is drawn for their case, and this can be determined only by examining the average number of Blacks to be selected from the actual as compared to a representative list. As indicated, a difference of two Negroes is to be expected, on the average, with venires of sixty members, and a difference of one Negro is to be expected, on the average, with a venire of forty members.

While the statistical evidence supplies added reason for the judges of this District to give careful consideration to the need to exercise their discretion to modify the existing district plan for juror selection, see 28 U.S.C. § 1363(a), the record does not establish that use of the present jury wheel to select a venire from which the petit

Jury will be chosen in this case denies defendants any protected rights. Accordingly, their motion is denied.

Dated at New Haven, Connecticut, this 22 day of May, 1974.

Jon O. Newman

Jon O. Newman

United States District Judge

1 Sang - cross

2 MR. CLIFFORD: I have nothing further.

3 MR. MAXWELL: No redirect.

4 THE COURT: You are excused.

5 (Witness excused.)

6 MR. MAXWELL: At this time the government rests.

7 THE COURT: I will excuse the jury for what will
8 be their recess.

9 (Jury excused.)

10 MR. CLIFFORD: At the close of the government's
11 case, the defendants moves for judgment of acquittal.
12 Perhaps I can best do that by referring to the counts
13 of the indictment themselves.

14 If I could leave aside for the moment the count
15 which involves Government Exhibit 9, which is the
16 Lindora Barnes check in the amount of one hundred
17 fifty-three dollars and thirty some cents, which I
18 think is Count No. 9, and direct my attention to
19 Counts One through Eight; your Honor, on Count One
20 through Eight, my recollection of the testimony is
21 that there has been no affirmative evidence showing
22 this check to have been in the possession of Mrs.
23 Samuel, knowing that said check had been stolen from
24 the mails, other than the testimony of Mr. Sang.

25 THE COURT: Does she have to know it was stolen --

1 MR. CLIFFORD: Yes, I think the statute says that.
2 That's one of the elements of the offense, that she has to know
3 that -- otherwise, there is no federal jurisdiction. Otherwise,
4 if, in fact, she does not know it was stolen from the mails,
5 then I take it there is no federal offense.

6 THE COURT: A person doesn't always have to know the
7 jurisdictional element. If you assault a federal officer, you
8 don't have to know he is a federal officer.

9 MR. CLIFFORD: Isn't there some dispute on that example?

10 THE COURT: Not in this Circuit, I don't think so.
11 In any event --

12 MR. CLIFFORD: I take it that --

13 THE COURT: The cases that was allowed the inference
14 from recent possession have allowed both as to knowledge of
15 theft and knowledge of theft from the mails, provided there is
16 evidence from which a jury can infer that the item was stolen
17 from the mails. In other words, that it was put into the
18 channels of the mail and not received by the addressee.

19 MR. CLIFFORD: We are headed in the same direction,
20 because of whether I'm right or wrong --

21 THE COURT: There is a recent case that does limit the
22 knowledge, and the statute suggests it, as a matter of fact,
23 because it says that the person has to be in possession of an
24 item so stolen, referring back to stolen from the mails, and
25 then when it says "with knowledge", it just says "with knowledge"

1 that it was stolen." It doesn't say "with knowledge that it was
2 so stolen". It seems to me that the Congress made a distinction,
3 the item had to be stolen from the mails, but the statute, I
4 think, suggests that the knowledge is only that it was stolen.
5

6 MR. CLIFFORD: I would argue to the contrary, but be
7 that as it may, the same inference that your Honor is drawing
8 relies on one single statement, and that is the presumption of
9 possession of recently stolen property allows these other
10 inferences to fall therefrom or to follow from that question
11 of possession.

12 THE COURT: It's not just an inference from recently
13 stolen property, from the property. There has to be circumstances
14 to show that it was put into the mails and not received by the
15 addressee.

16 MR. CLIFFORD: Assuming that to be so, but the only
17 evidence against this defendant on Counts One to Eight is the
18 possession, and what I'm suggesting, your Honor, is that the
19 possession alone without any corroborating testimony as to those
20 counts, that that alone is an impermissible, uncorroborated,
21 unsupported, that that is impermissible for the jury to follow
22 from that fact alone the inferences which I recognize the law
23 says they may draw --

24 THE COURT: There is a little more here than just
25 naked possession. It's the possession and use.

MR. CLIFFORD: Not One through Eight.

1 THE COURT: If it was just --

2 MR. CLIFFORD: One through Eight, I don't mean to cut
3 you off, but One through Eight, as I recall the evidence, has
4 no facts pointing to this defendant other than possession. If
5 you believe Mr. Sang, the most you can believe is that at some
6 point in time my client wrote a name on the back of that check.

7 THE COURT: That's more than possession. That's taking
8 the document, which, after all, is a check, and taking a step
9 toward cashing it. That's more than possession.

10 I can understand your argument. I might not agree
11 with it, but I could follow it, if the only thing that connected
12 the defendant was a fingerprint, which might mean that in a
13 neighbor's apartment one day she said, "What is this?", and
14 picked it up and left her fingerprint on it, and did nothing
15 else with it. I can see your point that instantaneous and
16 otherwise innocuous possession might raise a question about
17 supporting an inference, although I think that the cases
18 may be against you.

19 MR. CLIFFORD: I think the cases are clearly against
20 me.

21 THE COURT: There is more here than just innocuous
22 possession. There is possession and a step towards the use of
23 the document, which is a little more than bare possession. In
24 fact, it's a lot more.

25 MR. CLIFFORD: I'm making my argument on that ground,

1 and on Count Nine, I recognize there is the handwriting and
2 fingerprint testimony, I still think that those two facts only
3 point to possession, and that the jury should not be allowed
4 to infer all the necessary elements of this crime in a federal
5 court from those facts alone.

6 It may be sufficient elsewhere, but not here, and I
7 think that on that -- those grounds, the motion for acquittal
8 should be granted.

9 THE COURT: I think the law is against you, and I
10 will deny it.

11 MR. CLIFFORD: But it's turning.

12 THE COURT: I will need clearer signals than I have
13 received thus far.

14 MR. CLIFFORD: The Supreme Court of Florida is not
15 having any trouble, and I think the signals are up.

16 THE COURT: Would you be ready to present your evidence?

17 MR. CLIFFORD: Yes, your Honor. Could you give me --

18 THE COURT: There is a disposition scheduled for 11:30.
19 We will take a short recess.

20 (Recess taken.)

21 THE COURT: Returning to the criminal case, I will
22 just amplify the basis of my ruling. My suspicion about what
23 the Congress had in mind is apparently borne out by the
24 legislative history which indicates that while the statute used
25 to say that persons ought to have knowledge that the item was so

1 stolen, meaning stolen from the mails, they dropped that
2 second "so", and the legislative report makes it quite clear that
3 they did it to eliminate the requirement that the knowledge be
4 that the letter was stolen from the mail and limit the knowledge
5 to the fact that it be stolen.

6 Your argument was only recently presented to the Supreme
7 Court, and got some support, but the score was six to three.

8 MR. CLIFFORD: That's respectable today, your Honor.

9 THE COURT: Your view is shared by the dissenting
10 judges in Barnes against United States, 412 --

11 MR. CLIFFORD: Justice Brennan, Marshall and Douglas.

12 THE COURT: As a matter of fact, that's who it was.

13 MR. CLIFFORD: I'm on the side of the angels, I
14 suspect. The date of the amendment, does your Honor have the
15 date?

16 THE COURT: When the statute was amended?

17 MR. CLIFFORD: Yes.

18 THE COURT: I think it was 1939.

19 (Jury entered courtroom.)
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Exhibit 7

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